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Woodrum v. Washington National Bank, December, 1898, 55 Pac. Rep. 333 (Kan.), where these principles are clearly set forth and soundly applied. There it appeared that certain mortgaged cattle in the hands of the mortgagee were destroyed through the tort of a third party. The mortgagee recovered from him a sum equivalent to his mortgage debt and in exchange for the balance of the judgment received a larger judgment against the mortgagor. It was held that the mortgagor might at his election charge the mortgagee for the amount of the uncollected balance of his judgment against the third party or take the judgments against himself as a constructive trust.

The injury to the complainant here was purely equitable, but the same principles are applicable — speaking broadly — to legal wrongs. A legal owner has the right to retake his property from the thief; it would seem that if the thief has disposed of the property, in all natural justice, the owner should likewise have a paramount claim against the proceeds. The only way in which he can get at those proceeds at law, by judgment in damages and attachment, is often hopelessly inadequate, — for instance, if the thief be insolvent; but equity, having taken jurisdiction because of the inadequacy of the legal process, will apply its own principles of reparation and declare a constructive trust of the proceeds in the hands of the thief. And certain courts, at least, will follow this reasoning. In the case of *American Sugar Refining Co. v. Faucher*, 145 N. Y. 552, where there had been a sale of chattels induced by fraud, it was held that the proceeds of a re-sale by the insolvent wrongdoer were a constructive trust for the victim of the fraud.

It is not easy to see just how far equity will go in its use of this sort of remedy, — clearly it is not applicable to every species of wrong. The question is finally one of policy, but the few precedents we have seem to group themselves — without regard to the nature of the right violated, whether legal or equitable — into two classes: cases where the wrong from which the proceeds arise is the misuse of another's property; cases where the wrong is a breach of some relation which is, in the broadest sense of the term, fiduciary.

SATISFACTION AS A CONDITION. — Whenever a contract contains a condition that the one party must be satisfied with the performance of the other or be under no obligation, the determination whether "actual satisfaction" or "reasonable satisfaction" is required is a question of interpretation. This was the issue in *Pennington v. Howland*, 41 Atl. Rep. 891 (R. I.). The defendant employed the plaintiff to make a pastel portrait of his wife, the contract providing that if the picture were not satisfactory the defendant should not pay. The portrait when finished was rejected by the defendant as unsatisfactory. Upon these facts, the court held that as the defendant was not actually satisfied the plaintiff had no cause of action; since, if the subject-matter of a contract involved personal taste, actual satisfaction was always necessary.

A promisee, if he be so indiscreet, may allow the promisor to condition his obligation upon his personal satisfaction. No rule of law or of public policy precludes the enforcement of such a condition, provided that the promisor acts in good faith. On the other hand the reference intended may well enough be to the satisfaction of the promisor as a reasonable man. The authority, however, is much in conflict; for the

courts have yielded to the temptation to lay down qualifying rules. When the subject-matter of the contract involves personal taste or judgment, an agreement that it shall be satisfactory to the promisor, it is said, necessarily makes him sole judge whether it answers that condition. *Gibson v. Lanage*, 39 Mich. 49. But when the satisfaction stipulated for involves other standards, such as quality, utility, salability, and the like, then, it is said, it is a necessary implication that he must decide as a reasonable man. *Duplex Co. v. Garden*, 101 N. Y. 387. However, these rules seem little more than attempts to classify the cases.

Upon principle the test should be the simple one of the actual intention of the parties. This is not to be sought by set rules of interpretation which foster fictions. The rules above recited express, it is true, certain postulates of experience which will guide the triers of fact—the court if the contract be written, the jury if the contract be oral. But to harden these into rules of law will often result in imposing upon one of the parties a liability which neither intended that he should assume. This view, moreover, that it is a problem of fact whether actual or reasonable satisfaction be requisite is well sustained by authority. *Singerly v. Thayer*, 108 Pa. St. 291; *Wood Co. v. Smith*, 50 Mich. 565. The decision in the principal case that satisfaction meant personal satisfaction is, indeed, unexceptionable; but that result would seem to be not, as the court holds, a conclusion of law but a conclusion of fact.

LARCENY OF A BUILDING.—From its very nature, larceny of a building must be a rare occurrence. Yet this is what was attempted by the defendant in *Regina v. Richards*, noted in the Law Journal, Jan. 14, 1899. Richards tore down an unoccupied building and removed it without the owner's knowledge. He was charged with stealing a house, but larceny of real estate having no place in the common law, the court were compelled to proceed against him under a statute to secure his conviction. Apparently the tearing down and the carrying away were one transaction; if so, the decision and its reason are clearly correct. The house remained realty until it was pulled down, when its materials became chattels. As such they immediately passed into the wrongdoer's dominion; and before their severance it is clear that the owner never had possession of them as personalty. Unless, therefore, between the conversion into personalty and the act of taking away there was an interval during which the chattels passed into the dominion of their owner, there could be no larceny.

What is sufficient to make these two acts distinct and vest the possession where it rightfully belongs may well be a matter of doubt from the cases. Where the wrongdoer has left the chattels in a ditch on the owner's land and returned for them several hours later, never having intended to relinquish his control, it has been held that no larceny was made out. *Regina v. Townley*, 12 Cox C. C. 59. Where three days elapsed between the severance and the taking, the defendant was convicted, in spite of the continuance of his felonious state of mind, on the grounds that his control ceased with his physical abandonment, and that continuity of intention is not equivalent to continuity of possession. *Regina v. Foley*, 26 L. R. Ir. 299. This case, moreover, was not supposed to overrule *Regina v. Townley*, *supra*, and *Regina v. Petch*, 14 Cox C. C. 116. It is clear that no one can divest himself of possession of a